

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

CC Docket No. 95-155

In the Matter of:

Toll Free Service Access Codes

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COMMENTS OF AERONAUTICAL RADIO, INC.

Aeronautical Radio, Inc. ("ARINC"),¹ hereby submits these comments on the Federal Communications Commission's ("FCC" or "Commission") *Notice of Proposed Rulemaking* ("NPRM") in the above-captioned proceeding.² By that proceeding, the Commission seeks comment on procedures for establishing new toll free service access codes.

Consumers, retailers and service providers alike benefit from the use of toll free numbers. This mutually productive relationship will be seriously undermined, however, if the numbering system is altered so as to affect adversely the reliability and convenience of toll free numbers. Accordingly, ARINC urges the agency to take steps to protect consumers and existing 800 subscribers.

1 ARINC is the communications company of the air transportation industry and is owned and operated by the airlines and other aircraft operators. ARINC provides the civil aviation community, including the Federal Aviation Administration, with a variety of telecommunications services and represents industry interests in regulatory and other forums. The airlines rely heavily on toll free telephone services to support their customer reservation systems. Accordingly, ARINC and the airlines are significantly affected by the regulatory decisions made in this proceeding.

2 Toll Free Service Access Codes, CC Docket No. 95-155, *Notice of Proposed Rulemaking*, FCC 95-419, released October 5, 1995.

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ARINC asserts that the best way to preserve the reliability of the toll free numbering system is to assign subscribers to different codes based upon functionality of use. Alternatively, the Commission should adopt a "right of first refusal" to offer existing 800 subscribers the identical numbers in new toll free codes. ARINC also urges the Commission to require that all telephone service providers immediately engage in a comprehensive, nationwide program of public education regarding the implementation of new codes. Last, the Commission should ensure that the costs of providing toll free services are apportioned fairly among 800 and other toll free number subscribers.

**I. THE COMMISSION SHOULD PROTECT THE RELIABILITY
AND CONVENIENCE OF TOLL FREE NUMBERS BY ASSIGNING
NEW CODES BY FUNCTIONALITY**

ARINC believes that the Commission can attain its goals while at the same time satisfy the needs of consumers and businesses by assigning toll free codes according to the functionality of their use. For example, ARINC supports assignment of all residential, paging and cellular toll free subscribers to the 888 and other codes and reserving the 800 code for existing subscribers and new business, service industry and retail subscribers.

Separating codes in this manner would serve to address the major concerns raised by the FCC in the *NPRM*. *First*, separating codes by functionality would resolve the problem of 800 number depletion by moving the bulk of new uses -- such as residential, paging and cellular -- to separate codes. *Second*, this approach would enhance number conservation by eliminating incentives for entities to hoard

numbers in anticipation of a shortage and by alleviating the need for businesses to reserve duplicate numbers in every new code.

Third, separating codes according to function would greatly simplify the process of public education. Consumers are already familiar with the assignment of numbers by billing arrangements (e.g., "900" versus "800" codes), regions of the country (area codes) and local calling areas (prefixes). Thus, dividing toll free numbers by function would be easily understood and accepted by consumers, thereby facilitating the addition of new codes.

Fourth, a system of separate codes would preserve the reliability and convenience of the existing toll free numbering system. Competitors would be less able to utilize deceptively similar numbers in other codes to profit from the marketing efforts and reputation of existing businesses. Furthermore, residential, paging and cellular toll free number subscribers would obtain substantial relief from dialing errors that cause some toll free users to receive incoming calls intended for large businesses with similar toll free numbers. As a result, customer confusion would be averted and the public's confidence in the existing system would remain intact.³

In sum, the Commission would satisfy both its stated goals and the needs of consumers and businesses through the adoption of a system that divides codes by functionality. This proposal could resolve the toll free number depletion problem,

³ A functional approach also would be easy to implement and administer. In contrast, the proposal set forth in the *NPRM* to bar competitors of current 800 number holders from obtaining the equivalent 888 or other toll free numbers would create a substantial administrative burden and an ongoing "policing" responsibility for the Commission and the telephone companies.

encourage conservation, increase customer convenience, and protect the reliability of the current system.

**II. AS AN ALTERNATIVE, THE COMMISSION SHOULD GRANT
INCUMBENT 800 USERS A "RIGHT OF FIRST REFUSAL"
TO OBTAIN IDENTICAL NUMBERS IN OTHER CODES**

If the Commission does not implement a plan to divide codes by functionality -- which ARINC prefers -- the Commission should offer 800 number holders a "right of first refusal" to obtain the identical numbers in other codes.⁴ Such a right is the minimum safeguard necessary to protect the substantial investments businesses have made in developing consumer awareness and confidence in existing numbers.

A right of first refusal would protect consumers from the confusion and waste that would occur if holders of new codes intentionally or inadvertently siphon off business and sales from current 800 numbers subscribers. It also would discourage the likely hoarding of new toll free numbers by speculators hoping to extract coercive rents from the holders of identical 800 numbers. Speculation in trade names and phrases has indeed occurred in the past, most recently in the

⁴ The right of first refusal would give the holder of an existing 800 number the option to obtain the identical seven digits under the 888 service code or other codes. The option would not have to be exercised until another party attempted to reserve the 888 or other toll free number in question. Holders of existing 800 numbers should be permitted to exercise this right of first refusal without being subjected to a fee, particularly if the level of traffic on their current 800 toll free line is sufficient to warrant reservation of additional lines. See Comments of 800/888 Users' Coalition.

assignment of addresses on the Internet.⁵ Similar speculation also will likely be injected into toll free numbering assignments if a right of first refusal for incumbent users is not provided.⁶ The Commission should prevent such speculation by offering incumbent 800 number subscribers identical numbers in the other codes.

A right of first refusal would not accelerate the depletion of numbers in other codes, as the FCC suggests. Only a small percentage of 800 numbers would need such protection.⁷ Moreover, a right of first refusal might *actually reduce* the depletion of numbers in other codes by precluding the speculation and rent-seeking that can be expected to occur. As discussed earlier, a "race to the phone company" will result between speculators and 800 number subscribers if the Commission does not adopt appropriate protections. In the end, the same numbers in other codes will be removed from the available pool. ARINC asserts that these numbers should be removed through an orderly and efficient utilization of a right of first refusal rather than through an inefficient wave of speculation and rent-seeking.

5 See Stewart Ugelow, *Address for Success: Internet Name Game*, The Washington Post at A1 (August 11, 1994) (potential speculators have been registering Internet addresses that mimic the trademarks of major businesses and it may cost the companies millions of dollars to regain control over the addresses).

6 Opponents of a right of first refusal argue that the FCC does not need to provide protection for 800 numbers because sufficient recourse is already available under trademark law. Trademark protection for telephone numbers is not unanimously accepted by the courts, however. Moreover, those courts that have provided trademark protection for numbers have severely limited the extent of that protection.

7 See Comments of 800/888 Users' Coalition.

III. THE COMMISSION SHOULD REQUIRE ALL TELEPHONE SERVICE PROVIDERS TO PARTICIPATE IN PUBLIC EDUCATION EFFORTS

The adoption of alternate toll free codes must be accomplished in concert with a comprehensive, nationwide program of education for consumers. Substantial disruption will clearly occur if the public is not adequately prepared for the transition, which is scheduled to occur early next year. It should therefore be the responsibility of all local exchange carriers and all long distance telephone service providers to promote this effort during this next few months. Accordingly, the Commission should mandate immediate and full participation by all telephone service providers to ensure that the roll-out of new toll free codes takes place without significant customer confusion or complaint.

IV. THE COMMISSION SHOULD ENSURE THAT EXISTING 800 SUBSCRIBER HOLDERS DO NOT SUBSIDIZE THE COSTS OF OTHER TOLL FREE SERVICES

ARINC has historically been concerned about appropriate cost allocation in the establishment of 800 database access services and has repeatedly urged the Commission to ensure that 800 subscribers pay only the costs associated with the provision of that service.⁸ In this proceeding, as well, the Commission should ensure that the ratemaking methodology employed for services in other codes not

⁸ See, e.g., Provision of Access for 800 Service, CC Docket No. 86-10, "Reply Comments of Aeronautical Radio, Inc." filed May 3, 1988, "Comments of Aeronautical Radio, Inc.," filed July 17, 1989; Reply Comments of Aeronautical Radio, Inc., filed November 20, 1991; "Reply Comments of Aeronautical Radio, Inc.," filed Jan. 13, 1992; "Comments of Aeronautical Radio, Inc.," filed March 13, 1992; "Comments of Aeronautical Radio, Inc.," filed July 10, 1992.

create a windfall for future toll free number subscribers. 800 number subscribers have been charged substantial sums to support an extensive network infrastructure for toll free services. Subscribers of other codes should not be permitted to utilize this same infrastructure without bearing their fair share of costs. Therefore, the agency should carefully review and consider all relevant ratemaking issues associated with the implementation of new codes.

V. CONCLUSION

The current toll free numbering system provides consumers, businesses and service providers with substantial advantages. The adoption of alternate codes must be accomplished in a manner that does not adversely affect this mutually beneficial relationship. Accordingly, ARINC urges the Commission to take the steps discussed above to ensure this result.

Respectfully submitted,

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November 1, 1995